

October 25, 2011



California First-Year Law Students' Examination

Answer all 4 questions.

Time allotted: 4 hours

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

Question 1

On June 1, Betty faxed FeedCo a letter, expressing an interest in purchasing pigs. In response, FeedCo faxed Betty an unsigned document entitled "Pig Sales Agreement," which, among other things, provided:

Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, approximately 1050 pigs each month during the term of this agreement, at a purchase price of \$33.25 per pig. Buyer shall purchase all of her feed requirements from Seller. The term of the agreement is three years. The agreement will be interpreted in accordance with the law of Washington.

On June 10, Betty signed and returned the document to FeedCo after making the following changes: (1) adding "+/- 20 head" to the phrase regarding the number of pigs to be purchased; (2) adding "for so long as the prices of FeedCo's feed are competitive with other suppliers" to the sentence requiring her to purchase her feed requirements from FeedCo; and (3) changing the choice of law provision from Washington to California.

On June 25, FeedCo presented Betty with a revised document signed by FeedCo. The revised document included Betty's change about competitive prices, and provided a contract commencement date of June 29. It did not include Betty's changes about the number of pigs to be purchased or about the choice of law provision. Betty again made those two changes to the document, initialed her changes, signed it, and returned it to FeedCo.

On June 29, Betty agreed to accept, and actually accepted, delivery of 1050 pigs from FeedCo for \$33.25 per pig.

On July 15, Betty received a further revised document signed by FeedCo. Once again, it did not include her changes about the number of pigs to be purchased or about the choice of law provision. At this point, Betty advised FeedCo that she would not accept any more pigs because they did not have a contract.

Can FeedCo prevail in a breach of contract action against Betty? Discuss.

Question 2

Al and his wife Bobbie owned a laundromat and lived in an apartment above it. They were having significant financial difficulties because the laundromat had been losing money.

Unbeknownst to Bobbie, Al decided to burn the laundromat down in order to obtain insurance proceeds. He contacted Ted, who had a reputation for being available to do "odd jobs." Ted agreed to set fire to the laundromat the next day for 20 percent of the insurance proceeds. Al told him that he would call him once everyone was out of the building.

The next day, Al invited Bobbie out for a walk. While she was getting ready, he checked the laundromat, found no one there, and called Ted. While Al and Bobbie were out walking, Bobbie mentioned that, just as she was leaving, her brother Brad had come by the apartment unexpectedly and was napping on their couch. Al rushed to call Ted. When he could not reach him, he made an anonymous call to 911 to report a possible fire at the laundromat.

In the meantime, Ted started a fire that quickly engulfed the laundromat and the apartment, and killed Brad. After learning of Brad's death, Al decided not to file a claim for insurance proceeds.

With what crimes, if any, could Al be charged and what defenses, if any, could he assert? Discuss.

Question 3

Dana decided to purchase new carpet for her home from Larry. Before signing a contract, Larry carefully evaluated Dana's home, including the subfloor, and concluded that it would take approximately 10 hours over two days to complete the job.

Dana entered into a written contract with Larry providing that she would pay him \$2,500 for the carpeting project, including the removal and disposal of the old carpet, any necessary repairs to the subfloor, and installation of the new carpet.

When Larry ordered Dana's carpet, he discovered that the manufacturer's price had significantly increased. Later, when he began to remove her old carpet, he discovered that the subfloor was in far worse condition than he had expected. He then realized that the job would take at least 15 hours to complete.

As Larry worked, Dana expressed concern that he would not complete the job in time for an important dinner party she had planned for the following night. She pressed him to complete the job as soon as possible. He responded: "I'm going to lose at least \$500 on this job. Your carpet cost me a lot more than expected, and the installation is taking forever. If you really want me to complete this job by tomorrow, you should consider paying what the job is actually worth."

Shocked by what Larry said, Dana feared that he might walk off the job. Believing she had no alternative, she immediately agreed to pay an additional \$500. Larry worked later than usual that afternoon, and he completed the job in time for Dana's dinner party.

Dana is fully satisfied with the job, but has refused to pay Larry more than \$2,500.

Larry has sued Dana for breach of contract.

What arguments can Larry reasonably make to show that Dana has breached the contract, what arguments can Dana reasonably make to show that she has not, and who is likely to prevail? Discuss.

Question 4

One evening, a singer was performing at a local restaurant that was packed with customers. While he was performing, a fire broke out in the restaurant's kitchen and caused smoke to fill the premises. Seeing the smoke, he screamed, "Fire!" The customers panicked and rushed toward the exits.

Polly, a blind woman who was sitting at a table near the stage, tried to find an exit but mistakenly walked into the kitchen, where she inhaled thick smoke and was burned by flames. Eventually, she found her way outside and collapsed face-down on the sidewalk.

A passerby noticed Polly. Concerned that she might not be breathing, he turned her over and prepared to administer CPR. As it happened, she did not require CPR. But by turning her over, he worsened her injuries.

An investigation showed that the fire began in one of the restaurant's ovens. The oven's ventilation system had failed to work properly because grease had built up in a pipe and blocked the airflow. A statute provides that restaurants "shall equip ovens with ventilation systems and shall maintain such systems in working order at all times," and makes violation punishable by a fine of \$250 per day.

1. What claims, if any, can Polly reasonably bring against the singer, what defenses, if any, can he reasonably assert, and who is likely to prevail? Discuss.
2. What claims, if any, can Polly reasonably bring against the restaurant, what defenses, if any, can it reasonably assert, and who is likely to prevail? Discuss.
3. What claims, if any, can Polly reasonably bring against the passerby, what defenses, if any, can he reasonably assert, and who is likely to prevail? Discuss.